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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. KARLA MARICELA PALACIO SEPULVEDA, Defendant.	Criminal Case No. 07-CR-3394 IEG **GOVERNMENT'S TRIAL MEMORANDUM** Date: April 29, 2008 Time: 9:00 a.m. Honorable: Irma E. Gonzalez

The UNITED STATES OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and Stewart Young, Assistant U.S. Attorney, files its trial memorandum.

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I.

STATEMENT OF THE CASE

A. INDICTMENT

On December 18, 2007, a federal grand jury in the Southern District of California returned a two-count Indictment charging defendant Karla Maricela Palacio Sepulveda ("Defendant") with importing approximately 38.62 kilograms (84.96 pounds) of marijuana into the United States in violation of Title 21, United States Code, §§ 952 and 960; and possessing that marijuana with the intent to distribute, in violation of Title 21, United States Code, § 841(a)(1). Defendant was arraigned on the Indictment on December 18, 2007, and pleaded not guilty.

B. TRIAL STATUS

A jury trial is scheduled for Tuesday, April 29, 2008, at 9:00 a.m. before the Honorable Irma E. Gonzalez. The United States expects its case-in-chief to last approximately **one** day.

C. DEFENSE COUNSEL

Marc X. Carlos, Esq. is appointed counsel.

D. DEFENDANT'S CUSTODY STATUS

Defendant is in custody.

E. INTERPRETER

The United States anticipates that none of its witnesses requires the assistance of an interpreter.

F. JURY WAIVER

Defendant has not filed a jury waiver.

G. PRE-TRIAL MOTIONS

On January 15, 2008, Defendant filed motions to (1) compel discovery and (2) file further motions. The Government filed its response in opposition on January 16, 2008. The Court set the motion hearing for April 28, 2008, and set the trial for April 29, 2008. On April 14, 2008, Defendant filed motions to preclude 404(b) evidence, to preclude 403 evidence, to preclude 609 evidence, and for leave to file further motions.

On April 22, 2008, the United States filed motions *in limine* to: (1) exclude all witnesses except case agent; (2) prohibit evidence or reference to health, finances, education, and potential punishment;

(3) preclude self-serving hearsay; admit expert testimony; (4) limit character evidence; (5) preclude evidence of duress and necessity; (6) admit expert testimony by the United States; (7) preclude expert testimony by the Defendant; (8) admit 404(b) evidence; (9) admit evidence of demeanor, or lack thereof; (10) allow rebuttal expert testimony. The motions in limine hearing is set for April 28, 2008.

H. STIPULATIONS

The parties anticipate that they will stipulate that the substance found in the vehicle was marijuana, and that the amount of marijuana was approximately 38.62 kilograms. Hence, the United States anticipates that it will not need to call the DEA Chemist to testify.

I. DISCOVERY

The United States has complied and will continue to comply with its discovery obligations. To date, defendant has not produced reciprocal discovery.

II.

STATEMENT OF FACTS

A. PRIMARY INSPECTION

On December 5, 2007, at approximately 3:56 p.m., Defendant entered the Calexico West, California Port of Entry ("POE") as the driver and sole occupant of a 1996 Pontiac Bonneville, bearing Baja/Mexico license plate number BCU3214. At primary inspection, Customs and Border Protection ("CBP") Officer Alexandro Felix contacted the Defendant, who was identified by her Border Crossing Card. Defendant gave a negative declaration and stated that she had owned the vehicle for one year. She stated that she was heading toward Calexico, California. While speaking to Defendant, CBP Officer Felix did not notice any signs of nervousness, but he did smell what appeared to be soap and marijuana around the area of the glove compartment. He referred the vehicle to secondary for further inspection.

B. SECONDARY INSPECTION

In secondary inspection, CBP Officer Carmen Estrada contacted Defendant and received a negative declaration. Defendant stated to Officer Estrada that she was heading to Calexico, California, to buy some shoes. She further stated that after buying shoes, she would drive to Heber, California to visit her aunt. While speaking with Defendant, Officer Estrada did not observe any signs of nervousness, but did notice shiny packages behind the glove compartment and the inside of the dashboard. Officer

Estrada detained Defendant in the vehicle secondary office.

CBP officers then removed 21 packages from a compartment located inside the dashboard of the vehicle. One of the packages was probed and field-tested positive for marijuana. A total of 21 packages were removed with an aggregate weight of 38.62 kilograms.

C. CHEMICAL EVALUATION OF THE DRUGS SEIZED

A forensic chemist employed by the Drug Enforcement Administration and assigned to the Southwest Regional Laboratory in this district conducted a series of evaluations on the seized drugs and concluded that the substance tested positive for marijuana.

D. RELATED EVENT

On May 4, 2005, Oscar Herrera-Martinez applied for admission to the Calexico West, California Port of Entry driving a 1989 Dodge Grand Caravan bearing Baja Mexico license plate number BCT4879. Herrera stated at primary that the vehicle belonged to his female cousin "Karla Palacio Sepulveda." CBP Officer Garcia viewed the registration of this vehicle, and saw that it listed "Karla Maricela Palacio Sepulveda" as the owner. Upon noticing that the gas tank sounded solid, approximately 29.26 kilograms of marijuana were found concealed in the gas tank of that vehicle.

Herrera-Martinez and his passenger, Alberto Aguilara-Garcia, both pleaded guilty to an information charging them with importation of marijuana and aiding and abetting. They were sentenced to 6 months custody and 2 years supervised release by Judge Gordon Thompson in Case No. 05-CR-956-GT.

III.

WITNESSES

The United States expects to call the following witnesses, although it reserves the right to change the order of these witnesses, substitute witnesses, add, or omit one or more witnesses:

1. A. Felix, Customs and Border Protection (Primary)
2. Carmen Estrada, Customs and Border Protection (Secondary)
3. Lonnie Brasby, Special Agent, Immigration and Customs Enforcement (Case Agent)
4. Ruben McDowell, Special Agent, Immigration and Customs Enforcement (TECS witness)
5. Paul Lewenthal, Special Agent, Immigration and Customs Enforcement (Value expert)

6. Silvia Tarin-Brousseau, DEA Forensic Chemist (absent drug stipulation)

7. John Kapitzke, Special Agent, Immigration and Customs Enforcement (Herrera case)

Pursuant to Federal Rules of Criminal Procedure Rule 16(a)(1)(G), on April 21, 2008, the Government gave Defendant notice of its intention to call an expert in narcotics trafficking, the value of illicit narcotics, and distributable quantities of marijuana. The Government also gave notice of its intention to call a DEA Forensic Chemist as an expert witness to testify that the packages seized contained marijuana. Finally, on April 28, 2008, the Government gave notice of its intent to call either Special Agent Ruben McDowell or Special Agent Lonnie Brasby with ICE to discuss the TECS evidence. It is the United States position that a TECS expert is not needed, but did give Defendant notice of its intent to call one of these two people in the event that TECS evidence is introduced, likely in rebuttal.

IV.

EXHIBITS

The United States will provide a complete exhibit list prior to trial. The United States requests that Defendant examine United States' exhibits before trial to expedite proceedings. The United States further requests an opportunity to examine Defendant's exhibits before trial. The United States intends to offer into evidence the following:

1. Sample of Marijuana
2. Photographs of Sepulveda Vehicle
3. Photographs of Bulk Marijuana
4. TECS records regarding vehicle and Defendant
5. Photograph of Calexico West POE
6. Valuation Chart

V.

LEGAL ISSUES

A. EVIDENTIARY ISSUES

The Government anticipates that any evidentiary issues will be addressed in its motions *in limine*.

B. ELEMENTS OF THE CHARGED OFFENSES

1. 21 U.S.C. §§ 952 & 960, Importation of a Controlled Substance

The United States must prove beyond a reasonable doubt that:

1) Defendant knowingly brought marijuana into the United States; and

2) Defendant knew that it was marijuana or some other prohibited drug.

9th Cir. Crim. Jury Instr. 9.27 (2003).

2. 21 U.S.C. § 841(a)(1), Possession of a Controlled Substance with Intent to Distribute

The United States must prove beyond a reasonable doubt that:

1) Defendant knowingly possessed marijuana or some other prohibited drug; and

2) Defendant possessed it with the intent to deliver it to another person.

9th Cir. Crim. Jury Instr. 9.13 (2000). It does not matter whether Defendant knew that the substance was marijuana. It is sufficient that a defendant knew that it was some kind of prohibited drug. Id.

With regard to possession, the Government also notes that possession may be actual or constructive, and it may be proved by direct or circumstantial evidence. See United States v. Magallon-Jimenez, 219 F.3d 1109, 1112-1113 (9th Cir. 2000). Moreover, a defendant's mere possession of a substantial quantity of a controlled substance may show that the defendant knowingly possessed the substance. See United States v. Diaz Cardenas, 351 F.3d 404, 407 (9th Cir. 2003)(holding that jury could infer knowledge when an individual is the driver and sole occupant of a vehicle containing 9.48 pounds of methamphetamine (4.31 kilograms) and 17.65 pounds of cocaine (8.02 kilograms) concealed in the air bag of the vehicle); United States v. Sanchez-Lopez, 879 F.2d 541, 555 (9th Cir. 1989) (finding 2.5 kilograms of cocaine sufficient to show knowledge and intent to distribute and noting that a secret compartment within a vehicle used to conceal illegal substances can raise an inference concerning knowledge of the substance).

With regard to distribution/delivery, the United States may prove the "intent to deliver" element based on the following: a large quantity of contraband (United States v. Diaz Cardenas, 351 F.3d at 407); the manner in which the controlled substance was packaged (United States v. Glenn, 667 F.2d 1269, 1292 (9th Cir. 1982)); and the street value of the narcotics (United States v. Davila-Escovedo, 36 F.3d 840, 843 (9th Cir. 1994)).

VI.

VOIR DIRE

The United States requests that the following voir dire questions be addressed to the jury panel in addition to the Court's standard jury questions:

1. The Court will instruct you about the law. Will you follow the law as given by the Court and disregard any idea or notion you have about what the law is or should be?

2. The Government will be calling witnesses employed by the Department of Homeland Security, Customs and Border Protection and Immigration and Customs Enforcement. Does anyone have family members or close friends who work, or have worked, for these agencies? Would that prevent you from being fair and impartial?

3. Has anyone had an unpleasant or negative experience with any law enforcement personnel? Would that cause you to be biased against law enforcement?

4. Has anyone ever had any disputes with any agency of the United States Government? If so, please describe.

5. Have you or any relatives or close friends ever been accused of, or charged with, a similar crime?

6. Has anyone had any training in the law? If so, please explain.

7. Will you be able to put aside any feeling of sympathy or pity for the defendant when deciding the facts of this case?

8. Does everybody understand that the defendant is entitled to a fair trial? Does everybody understand that the United States is also entitled to a fair trial?

9. You understand that the parties have asked for a trial because they disagree on what the facts are and they want you to make a decision. Does anybody have any moral or religious reservations that might prevent them from standing in judgment of other human beings?

10. The defendant in this case is charged with importation of a controlled substance. Does anybody have strong feelings or opinions about U.S. narcotics laws that would prevent them from viewing the evidence impartially?

11. The law requires the government to prove its case against the defendant beyond a reasonable doubt. If you are selected, would you want the government to prove its case by a higher standard of proof, say beyond any possible doubt?

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VII.

JURY INSTRUCTIONS

Proposed jury instructions will be filed under separate cover. The United States reserves the right to submit additional instructions at the Rule 30 conference.

DATED: April 28, 2008.

Respectfully Submitted,

KAREN P. HEWITT
United States Attorney

s/ Stewart M. Young
STEWART M. YOUNG
Assistant U.S. Attorney

Attorneys for Plaintiff
United States of America

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. KARLA MARICELA PALACIO SEPULVEDA, Defendant.	)	Case No. 07-CR-3394 IEG CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED THAT:

I, Stewart M. Young, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of Government's Trial Memorandum to be served on the following by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

1. Marc X. Carlos, Esq.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 28, 2008.

s/ Stewart M. Young
STEWART M. YOUNG